

REMARKS

Claims 1, 4-11, 13, 15, 18-20, 36, and 37 are pending. Claims 1, 4-11, and 13 stand rejected for lack of enablement. Claims 10, 11, 15, 18-20, 36, and 37 stand rejected for indefiniteness.

Rejections under 35 U.S.C. § 112, 1st paragraph

The basis of the rejection of claims 1, 4-11, and 13 for lack of enablement is that the step “analyzing the distribution of the non-target polynucleotide data points” was optional in independent claim 1, yet the Examiner asserts this step is required when determining length diversity among polynucleotides in a sample, i.e., option (ii).

For option (ii), claim 1 has now been amended to remove the optional language and to require analysis of the distribution of non-target polynucleotide data points prior to determining the length diversity among polynucleotides, as requested by the Office.

Specifically, the claim recites:

(ii) length diversity among polynucleotides present in a sample, wherein distribution of non-target polynucleotide data points outside of the at least one cluster indicates that non-target polynucleotides have a different length than the target polynucleotides, wherein, prior to said determining, the distribution of the non-target polynucleotide data points is analyzed.

Claim 1 now cannot “be fairly interpreted as possibly NOT performing the analysis of distribution of the non-target polynucleotide data points with respect to step (ii),” and the rejection is moot.

Rejections under 35 U.S.C. § 112, 2nd paragraph

The rejection of claims 10, 11, 15, 18-20, 36, and 37 for indefiniteness is based on two grounds.

The first ground, applicable to claim 10 and its dependent claim 11, is because it is unclear to the Office where the analyzing step in claim 10 occurs in the overall method. Claim 10 has now been amended to delete the analyzing step and instead recite that the method comprises determining (ii) length diversity among polynucleotides present in a sample. The rejection of claims 10 and 11 is now moot.

The second ground, applicable to claims 15 and dependent claims 18-20, 36, and 37, is because step (iv) recited an analysis step. The analysis step has now been deleted as being superfluous, and the rejection is also moot.

Claim Amendments

Claims 10, 18, and 19 have been amended to require one of the four options recited in independent claim 1 or 15 and to delete repetitive text. Claims 36 and 37 have been amended to refer to the specific option required by number for consistency. New claims 38-40 are directed to the method of claim 1, each requiring one of options (i), (iii), and (iv). All the amendments are supported by the independent claims, and no new matter has been added.

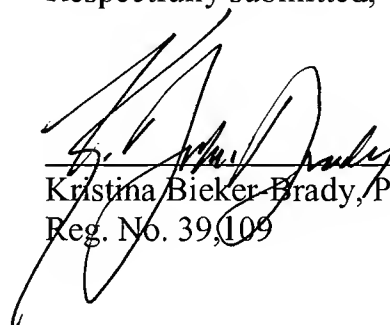
CONCLUSION

Applicant submits that the claims are in condition for allowance, and such action is respectfully requested. Enclosed is a petition to extend the period for reply for three months, to and including November 3, 2008. If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date:

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Kristina Bieker Brady, Ph.D.
Reg. No. 39,109

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045